

**APR 26 2006**

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**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

JUAN VILLAGOMEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-70974

Agency No. A92-598-007

AMENDED MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted February 10, 2006<sup>\*\*</sup>  
Seattle, Washington

Before: LEAVY, RYMER and FISHER, Circuit Judges.

The memorandum disposition filed February 21, 2006, is amended in full as follows:

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<sup>\*</sup>This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup>This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Juan Villagomez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeal's ("BIA") decision denying his motion to reopen removal proceedings and reconsider its previous decision denying his application for a waiver of inadmissability under former section 212(c) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(c). We review for abuse of discretion the BIA's denial of a motion to reopen and reconsider. *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). We dismiss the petition in part and deny it in part.

Villagomez has not argued that the BIA abused its discretion in denying his motion to reopen and reconsider, nor has he challenged the BIA's determination that he was not deserving of cancellation of removal. Villagomez has thus waived any consideration of those issues. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1260 (9th Cir. 1996). Villagomez instead challenges the BIA's initial dismissal of his appeal, arguing (1) that he was not removable because his convictions do not qualify as crimes of violence or domestic violence and (2) that the BIA erred when it declined to remand his case to the IJ. However, we lack jurisdiction to consider Villagomez's contentions, because he failed to petition for review of the BIA's original October 8, 2003 order within 30 days of that decision. *See* 8 U.S.C. § 1252(b)(1); *Membreno v. Gonzales*, 425 F.3d 1227, 1229 (9th Cir. 2005) (en banc). It makes no difference that Villagomez timely petitioned for review of the BIA's

denial of his motion to reopen and reconsider because an order of removal “is final, and reviewable, when issued,” and “[i]ts finality is not affected by the subsequent filing of a motion to reconsider.” *Stone v. INS*, 514 U.S. 386, 405 (1995); *see also Martinez-Serrano*, 94 F.3d at 1258 (holding that an alien’s filing of a motion to reopen does not toll statutory deadline for appealing the underlying final order).

Petition for review **DISMISSED** in part and **DENIED** in part.